

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA09-483

ASSOCIATED BUILDING &
DEVELOPMENT and BITUMINOUS
CASUALTY CORP.
APPELLANTS

V.

ROBERT NEWBY and SECOND
INJURY FUND
APPELLEES

Opinion Delivered November 11, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F508738]

AFFIRMED

JOSEPHINE LINKER HART, Judge

Appellants appeal from the Arkansas Workers' Compensation Commission's decision that appellee Robert Newby is entitled to a ten-percent impairment rating to the left upper extremity. Specifically, appellants argue that there is not substantial evidence that the "major cause" of Newby's impairment to his left shoulder was his work-related injury rather than his preexisting arthritic condition. We conclude that substantial evidence supports the Commission's conclusion and affirm.

The parties stipulated that Newby sustained compensable injuries to both shoulders in July 2005. The injuries occurred when Newby lunged backward after the bit on a jackhammer he was operating wedged in concrete. Appellants accepted liability for a seven-

percent impairment rating to the left shoulder.¹ In 2007, the Commission determined that Newby was entitled to additional medical treatment for his left shoulder. Newby underwent a left-shoulder arthroscopic distal clavicle resection and subacromial decompression. Newby's treating physician opined that Newby sustained a ten-percent left-upper-extremity impairment due to the arthroplasty of the left-shoulder acromioclavicular joint.

The administrative law judge concluded that Newby showed by a preponderance of the evidence that he sustained a ten-percent left-upper-extremity impairment. The ALJ wrote that based on Newby's credible testimony and the medical evidence, Newby was not in any need of a surgical procedure to his left shoulder prior to his work-related injury and that Newby's symptoms, prior to his injury, were not severe enough to require surgery. The ALJ further wrote that Newby was able to perform physical work daily prior to the injury. The ALJ also relied on the deposition testimony of Newby's treating physician, who opined that Newby suffered an exacerbation of a chronic condition, his preexisting arthritis in his left-shoulder acromioclavicular joint. The ALJ concluded that Newby's compensable injury was the "major cause" of his impairment. The Commission adopted the judge's findings.

On appeal, appellants argue that substantial evidence does not support the Commission's decision that Newby's work-related injury was the "major cause" of his impairment rating assessed to his left shoulder. Appellants note that appellee had preexisting

¹Compensation for the right shoulder is not at issue here.

arthritis in his left shoulder and that a medical record indicated that Newby had pain and a limited range of motion in his shoulders prior to his injury.

Our workers' compensation statutes provide that "[p]ermanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment." Ark. Code Ann. § 11-9-102(4)(F)(ii)(a) (Supp. 2009). Further, "[i]f any compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment." Ark. Code Ann. § 11-9-102(4)(F)(ii)(b). "Major cause" is defined as "more than fifty percent (50%) of the cause." Ark. Code Ann. § 11-9-102(14)(A). It is the Commission's duty to translate the evidence on all issues before it into findings of fact. *Hickman v. Kellogg, Brown & Root*, 372 Ark. 501, 277 S.W.3d 591 (2008). An employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. *Id.* We view the evidence in a light most favorable to the Commission's decision and affirm the decision if it is supported by substantial evidence. *Id.*

In *Pollard v. Meridian Aggregates*, 88 Ark. App. 1, 193 S.W.3d 738 (2004), this court reversed the Commission's decision that a claimant failed to establish that his work-related injury was the major cause of his impairment. In so holding, the court observed that where

a preexisting back condition did not cause the claimant problems prior to the compensable injury, the need for surgery and resulting impairment would not have occurred but for the work-related aggravation.

Similarly, prior to his work-related injury, Newby was able to perform very physical work daily, and his prior symptoms were not severe enough to require surgery. Further, as noted by the ALJ, Newby's treating physician observed that Newby suffered an exacerbation of a chronic condition. Given this evidence, we cannot say that the Commission's finding that Newby's work-related injury was the major cause of his impairment was not supported by substantial evidence.

Affirmed.

PITTMAN and GLOVER, JJ., agree.